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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,788	09/04/2003	Paul N. Hardy	VACBAG-590	5499
7590 05/06/2005 Christopher John Rudy Ste. 8 209 Huron Ave. Port Huron, MI 48060			EXAMINER MEREK, JOSEPH C	
			ART UNIT 3727	PAPER NUMBER

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/654,788

Applicant(s)

HARDY ET AL.

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION***Election/Restrictions***

Applicant's election with traverse of the restriction in the reply filed on 2/07/05 is acknowledged. The traversal is on the ground(s) that the bag cannot be used without the box and that there is no undue burden to search all the species. This is not found persuasive because as stated in the original restriction: "The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using the product (MPEP j 806.05(h)). In the instant case the product can be used in a materially and different product of using. The bag can be used without the box and the box can be used without the bag." The method requires that the bag reside in the container. The product claims do not require the bag in the box. It is the examiners position that the bag can be used without the box. The bag can be used a **different** method of using the bag. The point is that this method is **not the same** as the method as claimed by applicant. Moreover, the product claims are directed to only the containment web and the deployment system. Claim1 states "A deployable bag for a container" and always refers to the container with the term "the". The claim is clear that it only functionally refers to the container and does not positively recite the container. With respect to claim 11 the same is true. The claim states that the bag is "for a container" which does

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not require the container. Again applicant uses the term "the" with reference to the container. This does not positively recite the container. If applicant intends to claim the combination then the claims should state "a bag and container in combination. With regard to the species restriction, applicant has not provided any evidence that there is no undue burden on the examiner to search the species.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The replacement sheet showing Figs. 4 and 5 was drawings were received on 2/07/05. The examiner has approved this sheet.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 11, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5-9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Takashima (US 6,061,957). Regarding claims 1 and 5-9, see Fig. 10 and the abstract of the invention where the claimed structure is shown. The bag is deployable since it is inflatable. The deployable does not require any structure that is not in the reference. The claims do not require the box or the container. The claims only functionally set forth the box or the container. The preamble states a bag for use with a container and then the body of the claim uses "the" with respect to the container.

Claims 1, 5-9, 11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Frey et al (US 4,801,213). Regarding claims 1, 5-9, 11, and 13-16, see Fig. 1 where the bag is shown. The claims do not require the container. Moreover, the device of Frey et al uses a container. The limitation "industrial container" does not require any structure that is not in the reference. The bag is deployable since it is inflatable. The ribs extend along the bottom in both directions. The ribs have a component that extends both width wise and lengthwise. The ribs also cover the short wall and the long walls.

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Claims 1, 2 and 5-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Plone (US 5,345,622). Regarding claims 1 and 2 and 5-16, see Figs. 1-4 where the bag and the vacuum box is shown. The bag is deployable since it is inflatable. The ribs on the bottom extend as shown in Fig. 1 and 4 in both width and length wise direction. The ribs also cover the long and short walls. Regarding claims 2 and 12, the device is designed for a bathtub, which are about three feet wide and about two feet high. This satisfies the claim limitation of "at least about" language. The about provides for sizes above and below the exact number. Regarding claims 13-16, the intended use does not require any structure that is not in the reference. The liner is capable of receiving waste from a vacuum.

Claims 1, 6-11, and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Malone et al (US 2002/0081041 A1). Regarding claim 1, see Fig. 1c and the title where the liners are used in shipping containers. To the degree that the claim requires the container, the shipping container is an industrial container. The container is capable of being functioning as an intermodal container. Regarding claims 6-9, see Fig. 1c. Regarding claim 10, the claim does not require the vacuum box. Moreover, the liner goes in a box. The ribs extend in both length and width wise directions. Regarding claim 11, to the degree that the container is required the liner is used in a shipping container. This satisfies the industrial limitation. Regarding claim 14, the vacuum box does not require any structure that is not in the reference. The liner is received in a box.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 3, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malone et al Malone et al (US 2002/0081041 A1) in view of Bjelland et al (US 4,124,136). Regarding claims 2, 3, and 12, Malone et al does not teach the bag or liner having the claimed sizes. Bjelland et al, as seen in Col. 1, lines 45-46 teaches that shipping containers can be about 8 to 8.5 feet high, 8 feet wide, and either 20 or 40 feet long and these containers can carry liners. It would have been obvious to employ the liner of Malone et al in a container of the size as taught by Bjelland et al to carry more cargo in a single load.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

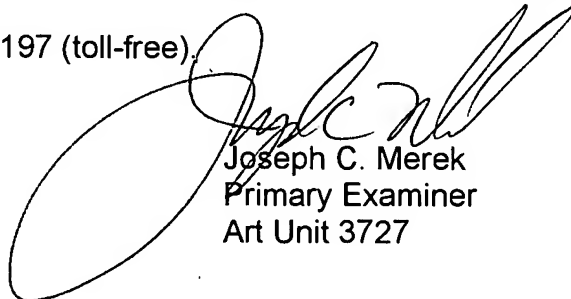
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Primary Examiner
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